IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.12351 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

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GUJARAT STATE CO-OP. BANK LTD. - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS URVI RAVAL for MR PS CHAMPANERI for the Petitioner
MR HEMANG H PARIKH, AGP for Respondent(s) : 1 - 2.
MR SHIRISH JOSHI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 19/12/2007
ORAL JUDGMENT

(1) RULE. Learned advocates appearing for the respondents are directed to waive service of rule as the petition is required to be decided on admission which has come on record in the

affidavit-in-reply filed on behalf of respondent No.2.

(2) The petitioner, an apex co-operative bank, is admittedly a creditor of one Surendranagar District Co-operative Bank Ltd. According to the petitioner, the said debtor bank is required to discharge liability to the tune of Rs.165 crores and more as on 07.12.2006. The petitioner has challenged the action of respondent No.2 authority taken under Section 81 of the the Gujarat Co-operative Societies Act, 1961 (the Act) on 26.07.2006 whereunder the executive committee of the debtor bank was superseded and respondent No.3 appointed as an administrator. Though various averments have been made qua functioning of respondent No.3 administrator for the present it is not necessary to enter into the said arena for the reasons that follow hereinafter.

(3) The principal grievance of the petitioner is that the provisions of Section 81(6) of the

Act read with Rule 37A of the the Gujarat Co-operative Societies Rules, 1965 have not been complied with before making order dated 26.07.2007 in exercise of powers under Section 81 of the Act.

(4) Affidavit-in-reply filed on behalf of respondent No.2 authority states in Paragraph No.9:

> "..... However, the Gujarat State Co-operative Bank as a body corporate is not consulted directly under section 81(6). ..... "

(5) Section 81(6) of the Act reads as under:

> "6. Before taking any action under sub-section (1) in respect of a society, the Registrar shall consult any co-operative financing institution to which it is indebted."

(6) On a plain reading of the provisions the statute mandates that the Registrar shall consult any co-operative financing institution to which the society is indebted before taking

any action under sub-section (1) in respect of such debtor society. In the present case the petitioner is the co-operative financing institution and respondent No.2 has made an order under Section 81(1) of the Act without any consultation with the petitioner. Though the aforesaid extract, reproduced hereinbefore, from the affidavit-in-reply seeks to insinuate that there was no direct consultation but there could have been indirect consultation, no evidence in this regard has come on record. Hence, for all intents and purposes there is violation of a mandatory prerequisite condition envisaged by the legislature before the authority can initiate action under Section 81(1) of the Act. In the circumstances, the impugned order dated 26.07.2006 cannot be permitted to operate.

(7) It is necessary to note that during course of hearing the learned advocate Mr.Shirish Joshi appearing on behalf of respondent No.3

administrator, raised a contention that the consultation envisaged by sub-section (6) of Section 61 of the Act need not be when the authority initiates action but has to be at the point of time just prior to making decision to take action under provisions of Section 81(1) of the Act. An incidental contention was to the effect that such consultation *per se* did not mean or could not be equated with consent and the authority had discretion to take action even after consultation.

(8) In light of the facts which have come on record viz. admission of the authority that there was violation of the prerequisite condition stipulated by sub-section (6) of Section 81 of the Act, it is not necessary to deal with the contentions raised by Mr.Joshi, as the said contentions would have no bearing in the facts of the case.

(9) However, it is also necessary to record one

more contention raised viz. that in such circumstances even person affected by action under Section 81 of the Act would be in a position to challenge such action on the ground that there was violation of provisions of sub-section (6) of Section 81 of the Act. The submission is, to say the least, misplaced and misconceived. The right which has been granted under sub-section (6) of Section 81 of the Act is a right of consultation vested in the co-operative financing institution, who is the creditor of the society against whose managing committee action is contemplated by provisions of Section 81 of the Act. Therefore, any other entity or person who is not a creditor co-operative financing institution does not derive any right to challenge action under Section 81 of the Act on the plea that there is violation of sub-section (6) of Section 81 of the Act. The position in law is well settled that a person cannot make a grievance in relation to a right

not vested in that person and hence, at the cost of repetition, it is required to be stated that no other person, entity or third party, except the creditor co-operative financing institution, would have the right to seek consultation, and as a consequence, seek redressal in case of violation of such a statutory right.

(10) For the reasons stated hereinbefore, impugned order dated 26.07.2006 made under Section 81 of the Act by respondent No.2 authority is hereby quashed and set aside. If the authority so chooses, it will be open to the authority to undertake a fresh exercise after complying with the statutory requirements, subject to the fact-situation warranting such an exercise.

(11) At this stage it is necessary to note that the following prayers have been made by the petitioner.

“18. The petitioner, therefore, prays that:

a) This Hon'ble Court will be pleased to issue appropriate writ, order or direction in the nature of mandamus or certiorari or any other appropriate writ, order or direction declaring that the appointment of the respondent No.3 herein as the Administrator of the Surendranagar District Cooperative Bank Ltd. under Section 81 of the Act is illegal, null and void and consequently, the said appointment pursuant to the order Annexure-A deserves to be quashed and set aside.

b) This Hon'ble Court will be pleased to issue appropriate writ, order or direction in the nature of mandamus or any other suitable writ, order or direction directing the present respondent No.2 to appoint the petitioner-bank as the Administrator in place of the executive committee of the Surendranagar District Cooperative Bank Ltd. by quashing and setting aside the directions contained in the order Annexure-A appointing the respondent No.3 herein as the Administrator instead of the petitioner-bank.

c) This Hon'ble Court will be pleased to

issue interim directions during the pendency of this petition to the respondents to make the appointment of the petitioner-bank as the Administrator of the Surendranagar District Cooperative Bank Ltd. in place of the respondent No.3 herein.

d) This Hon'ble Court will be pleased to issue interim direction to the respondent No.3 herein to adhere to the assurance given by him vide communication dated 30.8.2006 Annexure-F and to act as per the request made to the respondent No.3 by the petitioner-bank by letter dated 31.10.2006 Annexure-G within the reasonable time that may be deemed just, fit and proper.

e) This Hon'ble Court will be pleased to pass such other and further order as the nature and circumstances of the case may require."

However, in light of the view that the Court has taken it is not necessary to make any directions or grant any other relief in relation to any other prayers as the impugned order has been quashed and set aside.

(12) The petition is allowed accordingly to the

aforesaid extent. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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